

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

ID

Telephone Number:

Refer Reply To:

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Date:

May 23, 2011

Legend:

Fund =

Trust =

State =

Index =

Amount =

a =

x =

y =

Note A =

Term A =

Rate A =

Note B =

Term B =

Rate B =

Time A =

Time B =

Dear :

This is in response to a letter dated December 22, 2010, requesting a ruling that income and gain from commodity-linked notes is qualifying income under section 851(b)(2) of the Internal Revenue Code.

FACTS

Fund is a series fund of Trust. Trust is a business trust organized under the law of State. Trust is registered as an open-end management investment company under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq. ("the 1940 Act").

Fund intends to qualify each year as a regulated investment company ("RIC") under section 851 of the Code.

Fund intends to invest in two commodities-linked notes, Notes A and B.

Note A will be issued at an expected par value of Amount. Its payout formula will be determined with reference to the value of the Index. Its term will be Term A, as measured from trade date to maturity date. As holder of Note A, Fund will have the right to put Note A to its issuer at the calculated redemption price based on the closing value of the Index on the day notice of such redemption is received by the issuer if such notice is received on an Index trading day at or before Time A, or if otherwise the following Index trading day. In addition, if on any day the Index value falls to a level that is equal to or below x% from its value at the time Note A is acquired, Note A will automatically redeem based on the closing Index value of the next day on which the closing level of the Index is scheduled to be published by the Index's sponsor.

Note A will pay interest upon repayment. Interest will accrue daily and compound monthly at Rate A until paid as part of the redemption price.

The issuer's repayment obligation upon early redemption, automatic redemption, or at maturity equals Amount, plus or minus an adjustment, plus interest. The adjustment is calculated by multiplying Amount by a leverage factor of y (leveraged face amount) times the adjusted Index return. The adjusted Index return means the percentage of the increase or decrease of the beginning Index level compared to the ending Index level for the applicable period decreased by an annual fee amount of a% based on the number of days Note A is outstanding. The adjusted Index return will also

include an adjustment for the reversal of the interest rate factor included in the total return computation.

Note B will be issued to Fund at an expected par value of Amount and will have a payout based on a formula determined by reference to the Index. Note B will have a term of Term B measured from trade date to maturity date. Fund has the right to put Note B to the issuer at the calculated redemption price based on the closing value of the Index on the day notice of such redemption is received by the issuer if such notice is received on an Index trading day at or before Time B, or if otherwise the following Index trading day. In addition, if on any day the Index value falls to a level that is equal to or below $\underline{x}\%$, of the beginning Index value, Note B will automatically redeem based on the closing Index value of the next business day on which trading is generally conducted with respect to the components of the Index.

Note B will pay a monthly coupon in arrears. The coupon for each coupon period will be based on Rate B less $\underline{a}\%$. In the event of a put pursuant to the put option or an automatic redemption (that is, an “early redemption”), Fund will receive the accrued coupon up to the date of such event.

The issuer’s repayment obligation upon either an early redemption or maturity equals Amount plus or minus an adjustment. The adjustment is calculated by multiplying Amount by a leverage factor of \underline{y} (leveraged face amount) times the adjusted Index return. The adjusted Index return means the percentage of the increase or decrease of the beginning Index level compared to the ending Index level for the applicable period decreased by an annual fee amount of $\underline{a}\%$ based on the number of days Note B is outstanding. The adjusted Index return will also include an adjustment for the reversal of the interest rate factor included in the total return computation.

Fund makes the following representations with respect to Notes A and B:

- (1) The issuer of a Note will receive payment in full of the purchase price substantially contemporaneously with the delivery of the Notes;
- (2) The Fund, while holding a Note will not be required to make any payment to the issuer of the Note in addition to the purchase price paid for the Note, whether as margin, settlement payment, or otherwise during the life of the Notes or at maturity;
- (3) The issuer of a Note is not and will not be subject by the terms of the instrument to mark-to-market margining requirements of the Commodities Exchange Act, 7 USC 2, as amended (“CEA”); and
- (4) A Note is not and will not be marketed as a contract of sale of a commodity for future delivery (or option on such a contract) subject to the CEA.

LAW

Under section 851(g)(1) of the Code, Fund is treated as a separate corporation.

Section 851(b)(2) of the Code provides that a corporation is not considered a RIC for any taxable year unless it meets an income test. Under this test, at least 90 percent of its gross income must be derived from certain sources. Under section 851(b)(2), qualifying income includes

. . . dividends, interest, payments with respect to securities loans (as defined in section 512(a)(5), and gains from the sale or other disposition of stock or securities (as defined in section 2(a)(36) of the 1940 Act) or foreign currencies, or other income (including but not limited to gains from options, futures or forward contracts) derived with respect to its business of investing in such stock, securities, or currencies

Section 2(a)(36) of the 1940 Act defines the term “security” as

any note, stock, treasury stock, security future, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, any put, call, straddle, option, or privilege on any security (including a certificate of deposit) or on any group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or, in general, any interest or instrument commonly known as a “security”, or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

Section 2(f)(1) of the CEA provides that the CEA is not applicable to a hybrid instrument that is predominantly a security. Section 2(f)(2) of the CEA provides that a hybrid instrument shall be considered to be predominantly a security if –

(A) the issuer of the hybrid instrument receives payment in full of the purchase price of the hybrid instrument, substantially contemporaneously with the delivery of the hybrid instrument;

(B) the purchaser or holder of the hybrid instrument is not required to make any payment to the issuer in addition to the purchase price paid under subparagraph (A),

whether as margin, settlement payment, or otherwise during the life of the Notes or at maturity;

(C) the issuer of the hybrid instrument is not subject by the terms of the instrument to mark-to-market margining requirements; and

(D) the hybrid instrument is not marketed as a contract of sale of a commodity for future delivery (or option on such a contract) subject to the CEA.

Section 2(f)(3) of the CEA provides, in part, that for purposes of section 2(f)(2)(C) of the CEA, mark-to-market margining requirements do not include the obligation of an issuer of a secured debt instrument to increase the amount of collateral held in pledge for the benefit of the purchaser of the secured debt instrument to secure the repayment obligations of the issuer under the secured debt instrument.

ANALYSIS AND CONCLUSION

Based on the facts as represented, we rule that income and gain arising from the Notes is qualifying income described in section 851(b)(2) of the Code.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In particular, no opinion is expressed with regard to whether Fund qualifies as a RIC under subchapter M of the Code.

This ruling is directed only to the taxpayer who requested it, and is limited to the facts as represented by the taxpayer. Section 6110(k)(3) provides that this letter may not be used or cited as precedent.

In accordance with the power of attorney on file with this office, copies of this letter are being sent to your authorized representatives.

Sincerely,

Susan Thompson Baker
Susan Thompson Baker
Senior Technician Reviewer, Branch 2
Associate Chief Counsel
(Financial Institutions and Products)